

Message

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**From:** Kupchan, Simma [Kupchan.Simma@epa.gov]  
**Sent:** 9/16/2020 6:52:21 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**CC:** Wehling, Carrie [Wehling.Carrie@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Goodin, John [Goodin.John@epa.gov]  
**Subject:** RE: URGENT: Need draft ID issue paper for Dave's Review tomorrow  
**Attachments:** DRAFT Potential Next Steps in ID clean.docx

David,

John and I just spoke. John is comfortable sending the attached clean draft to Dave, once David and possibly Matt have considered; no need to slim it down further at this point.

David – do you think you would have time to review before COB today? Let us know either way. If you would like additional time, John will let Dave know we'd like to send the document tomorrow.

Thanks for your attention and review.

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

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**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Wednesday, September 16, 2020 2:42 PM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Goodin, John <Goodin.John@epa.gov>  
**Subject:** RE: URGENT: Need draft ID issue paper for Dave's Review tomorrow

I've suggested to the OW IO that either OW and OGC brief the Administrator jointly with a version of a more-detailed paper like the draft you've assembled or, if Dave's intent is not to get into this level of detail on the opinion or statutory and regulatory language but rather Ex. 5 AC/DP OW proceeds with a narrowed-down paper.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Sent:** Wednesday, September 16, 2020 2:07 PM  
**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Goodin, John <Goodin.John@epa.gov>  
**Subject:** RE: URGENT: Need draft ID issue paper for Dave's Review tomorrow

Thanks, Steve. John, I'll respond to your earlier message to the OWM/OWOW group with our edits, and perhaps we can put this in final shape for Dave to send to the Administrator. Once it's ready, we can send to David and Matt for their review before giving to Dave.

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**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Wednesday, September 16, 2020 1:53 PM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Goodin, John <Goodin.John@epa.gov>  
**Subject:** RE: URGENT: Need draft ID issue paper for Dave's Review tomorrow  
**Importance:** High

My suggestion would be to trim this down now to expedite review and more align with what typically goes to the Administrator, but that's John's call. Copying him here.

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**From:** Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Sent:** Wednesday, September 16, 2020 1:51 PM  
**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>  
**Subject:** RE: URGENT: Need draft ID issue paper for Dave's Review tomorrow

One more note – originally we were working toward John's 1 pm deadline for edits. If David and Matt are going to be diving in this afternoon or evening, however, perhaps we should work with John to trim down and get in final shape before OGC management review?

David – let us know your timing and if you'd like us to try to get it in final form with John Goodin before you review.

Thanks,

Simma Kupchan  
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**From:** Kupchan, Simma  
**Sent:** Wednesday, September 16, 2020 1:48 PM  
**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>  
**Subject:** RE: URGENT: Need draft ID issue paper for Dave's Review tomorrow

I think we would do this in coordination with John – John conveyed Dave's request for a one pager, but also sent us a 1 ½ page outline with specific "asks" for OGC to fill in. I envisioned the first step as sending John our edits (which also include edits from OWM), and working with him as to how to trim down, if needed.

Simma Kupchan

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**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Wednesday, September 16, 2020 1:44 PM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>  
**Subject:** RE: URGENT: Need draft ID issue paper for Dave's Review tomorrow

So this needs trimming down to a page by COB? What is the process going to be for doing that?

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**From:** Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Sent:** Wednesday, September 16, 2020 1:42 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>  
**Subject:** RE: URGENT: Need draft ID issue paper for Dave's Review tomorrow

Hi David,

John is responding to Dave's request

**Ex. 5 AC/DP**

**Ex. 5 AC/DP**

He wanted to send to Dave by COB. I don't know if Dave had timing constraints vis a vis sending to the Administrator. If you and Matt would like more time to consider, we can ask John to send Dave a note, or else either you or Matt could. If this is going to the Administrator I'd think Dave would want to make sure the GC is comfortable with it.

Let us know if any redactions on Florida are needed, given Matt's recusal, or if you will be only discussing with him orally.

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**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Wednesday, September 16, 2020 1:34 PM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>  
**Subject:** Re: URGENT: Need draft ID issue paper for Dave's Review tomorrow

There's a lot more in this draft about the decision and the statutory and regulatory interpretation than I expected. I will need to take a look at this closely and consult with Matt. What's the timing on our edits?

Sent from my iPhone

On Sep 16, 2020, at 1:22 PM, Kupchan, Simma <Kupchan.Simma@epa.gov> wrote:

David,

Attached is a clean and a very redlined version of the draft issue paper John Goodin outlined and plans to send to Dave Ross later today. Do you have time to take a quick look? I recommend the clean version.

Happy to answer any questions.

Thanks,

Simma Kupchan  
EPA Office of General Counsel  
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**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Tuesday, September 15, 2020 6:46 PM  
**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>  
**Cc:** Nalven, Heidi <Nalven.Heidi@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Kloss, Christopher <Kloss.Christopher@epa.gov>; Bathersfield, Nizanna <Bathersfield.Nizanna@epa.gov>  
**Subject:** RE: URGENT: Need draft ID issue paper for Dave's Review tomorrow

DELIBERATIVE/PRIVILEGED

Folks—here is a first cut with some holes to fill in. Though I've noted which offices might contribute what bullets, these are just suggestions for the arc of the paper—please feel free to edit anywhere as appropriate. In order to get a draft to Dave before COB Wednesday, recommend that offices provide text and edits to all by 1:00p. Andrew and Steve: I'm OK staying point for getting this draft done, then we can discuss next steps/POC tomorrow evening.

Thanks,  
John

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**From:** Goodin, John  
**Sent:** Tuesday, September 15, 2020 3:13 PM  
**To:** Steven Neugeboren <Neugeboren.Steven@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>  
**Cc:** Heidi Nalven <Nalven.Heidi@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Santell, Stephanie <Santell.Stephanie@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Sandra Connors <Connors.Sandra@epa.gov> <Connors.Sandra@epa.gov>  
**Subject:** URGENT: Need draft ID issue paper for Dave's Review tomorrow

DELIBERATIVE

Steve and Andrew—at OWOW's Biweekly this afternoon, Dave asked for a draft one-pager for the Administrator by tomorrow. **Ex. 5 AC/DP** I think Carrie's email summary from yesterday is helpful, and wondering if we could build on that or if either of you have additional material in the can or a paper drafted. I am happy to have my folks work from that email, but we'll need to have each fill in some blanks (also, Andrew, there was interest in having your state by state chart regarding the current criminal standard in each).

Dave is supportive of completing **Ex. 5 AC/DP** and the three of us need to caucus ASAP on how to accomplish what we can, caveats, schedules, and practicalities re: responsibilities. Dave's reaction was that, **Ex. 5 AC/DP**

**Ex. 5 AC/DP** I will look for a time in the next day or so.

Buckle up,

John

<DRAFT Potential Next Steps in ID clean.docx>

<DRAFT Potential Next Steps in ID.docx>